

LEONARD LUNING

IBLA 84-706

Decided November 16, 1984

Appeal from the rejection of a noncompetitive oil and gas lease offer because the subject land has been designated KGS.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Under 30 U.S.C. § 226(b) (Supp. V 1982), lands within the known geologic structure of a producing oil or gas field may be leased only by competitive bidding. Where lands are determined to be within such a structure, a noncompetitive lease offer for such lands must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

An applicant for a noncompetitive oil and gas lease who challenges a determination that the land is within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error.

APPEARANCES: Leonard Luning, pro se; Marla Mansfield, Esq., Office of the Regional Solicitor, Denver, Colo., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Leonard Luning was selected with first priority to lease Parcel WY 345 on the May 1983 list of lands available for the simultaneous filing of oil and gas lease applications. Upon notification of this by the Bureau of Land Management (BLM), Luning submitted his executed lease offer forms and first year's rental.

By its decision of June 8, 1984, BLM rejected Luning's offer because the land had been designated as being entirely within the Separation Flats known geological structure of a producing oil and gas field (KGS) effective January 9, 1984.

Luning has appealed the rejection of his offer, contending that the land at issue was incorrectly designated as KGS.

[1] The Mineral Leasing Act of 1920 was enacted to provide for development of oil and gas deposits situated on public lands. Two different procedures are set forth by the Act for leasing parcels of public lands. The leasing procedure selected for each parcel depends upon the character of the lands to be covered by the lease. Section 17(b) of the Act provides that all public domain lands which are within the KGS of a producing oil or gas field may be leased only by competitive bidding to the highest responsible qualified bidder. 30 U.S.C. § 226(b) (Supp. V 1982). Such leases are termed "competitive leases." See 43 CFR 3101.1-1(a); 43 CFR Part 3120. All other public domain lands are subject to lease under section 17(c) of the Act to the first qualified offeror if otherwise available for leasing. 30 U.S.C. § 226(c) (Supp. V 1982). These leases are called "noncompetitive leases." See 43 CFR 3101.1-1(a); 43 CFR Part 3110.

Thus, if lands embraced in a noncompetitive offer are designated as within a KGS before issuance of the lease, the noncompetitive lease offer must be rejected as to those lands. Hepburn T. Armstrong, 72 IBLA 329 (1983); Harry S. Hills, 71 IBLA 302 (1983). This Department has no discretion under the law to issue a noncompetitive lease for such lands, McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974), but rather is required to reject such an offer.

[2] An applicant for a noncompetitive oil and gas lease who challenges a determination that certain lands are situated within the KGS of a producing oil or gas field has the burden of showing that the determination is in error. Hepburn T. Armstrong, *supra*; Harry S. Hills, *supra*. "Known geologic structure" is defined in 43 CFR 3100.0-5(1) as "technically the trap in which an accumulation of oil or gas has been discovered by drilling and determined to be productive, the limits of which include all acreage that is presumptively productive." The Secretary of the Interior has traditionally delegated the duty for determination of the existence and extent of a KGS to his technical expert in the field. When that expert makes such a determination, the Secretary is entitled to rely upon his reasoned opinion. Bruce Anderson, 63 IBLA 111 (1982); Clear Creek Inn Corp., 7 IBLA 200, 213-14, 79 I.D. 571, 578 (1972). The boundaries of a KGS are defined for administrative purposes and cannot be taken as showing with absolute accuracy the extent, in each instance, of the geologic structure producing oil or gas. Robert G. Lynn, 61 IBLA 153 (1982).

When an applicant can demonstrate by a clear and definite showing that the presumption of productivity does not include the lands in question, the determination will be reversed. *E.g.*, James Muslow, Sr. (On Reconsideration), 65 IBLA 352 (1982). Where probative evidence is submitted which contravenes the rationale given for the determination, a hearing may be ordered so that a complete record can be developed. *E.g.*, Celeste C. Grynberg, 74 IBLA 180 (1983). Where the appellant provides technical data supporting his contention, and the record contains only a conclusory determination that the land is within a KGS, the Board may remand for consideration of the appellant's contentions. *E.g.*, Hepburn T. Armstrong, 60 IBLA 140 (1981).

Appellant has provided a geologic contour map depicting the top of the Dakota formation together with a brief narrative "Geologic Summary" by a geologist, which concludes that the subject parcel "is separated from the existing production both by structure and drilling."

In response BLM has submitted a plat of the area with a mylar overlay, showing well symbols, core tests, and contours for the top of the Muddy Sandstone Formation; a table of well data considered in making the KGS determination; and a brief narrative report by the BLM geologist describing the method and basis used by him in reaching his conclusion. He states that the structure is a northeast trending anticline, with gas being produced from three formations. He used the 3,700-foot structural contours to define the oil/water contact on the basis of oil or gas shows. The KGS was expanded by adding each 160-acre subdivision that is cut by the 3,700-foot isopach. (There is a State of Wyoming 160-acre spacing order controlling the Separation Flats field.)

We will not burden the record with an exhaustive analysis of the geologic evidence presented by the parties, and our specific evaluation of each item. Suffice it to say that we cannot find that appellant has met his obligation to show convincingly that the KGS determination is erroneous. Nor is the quality of appellant's geologic evidence sufficient to warrant an evidentiary hearing. Appellant has not attempted to define the oil/water contact. His geologist's statement that "Approximately 240 acres of the 320 acres is structurally (100 ft. - 400 ft.) low to the axis of the anticline," even if true, does not militate against the KGS determination. Appellant's statement that there are five dry holes in sec. 12 (where the parcel is situated) is incorrect. Finally, BLM asserts that drill stem tests of two wells drilled in sec. 12 revealed extensive shows of gas.

On the basis of this and other evidence of record, we conclude that there is adequate justification for including the subject land within the KGS.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Franklin D. Arness
Administrative Judge